

5 THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 693 OF 2016

JOSEPH KIGGUNDU PLAINTIFF

10 VERSUS

JOHN MURULI MUYAMBI DEFENDANT

BEFORE: HON. JUSTICE ESTA NAMBAYO

JUDGEMENT

15 The Plaintiff, Joseph Kiggundu, filed this suit against the Defendant, John Muruli Muyambi, seeking for recovery of UgShs. 300,000,000 (Three Hundred million Uganda shillings only), general damages for breach of contract and costs of the suit.

Brief background to the suit

20 The brief background to this case is that the Plaintiff owned land comprised in **Busiro Block 401-402 Plot 162 at Namulanda in Wakiso District**. In 1990, the Defendant used the Plaintiff's land title to obtain a loan from the defunct Uganda Commercial Bank. It is the Plaintiff's claim that he gave the Defendant his title on agreement that the Defendant would service the loan and return the title to him. That the Defendant defaulted on the loan and the land was transferred to the Non-Performing Assets Recovery Trust and sold to a third party. The Defendant denies the Plaintiff's claim, hence this suit.

25 **Representation**

Learned Counsel Joseph Luswata appeared for the Plaintiff while Counsel Deus Nsengiyunva was for the Defendant. After hearing of the case, Counsel filed their written submissions.

The following issues were framed for trial: -

1. Whether the Plaintiff has a valid claim against the Defendant.
2. Whether the Defendant ever made any agreement with the Plaintiff acknowledging any obligation towards the Plaintiff.
3. Whether the agreement or contracts between the Plaintiff and the Defendant are valid.
4. What are the remedies to the Parties?

Preliminary Objection

35 In his submission, Counsel for Defendant raised a preliminary objection that this suit is time
barred. He submitted that in the purported agreement made in 2009, the Defendant was
supposed to comply within 2 years, which brings it to 2011 or 2012. That the other alleged
agreement of 1991 is also time barred as the Plaintiff filed his suit in 2016 to enforce a contract
whose cause of action seems to have arisen in 1991 and 2009. Counsel explained that this not
40 being an action for recovery of land but allegedly based on contract, the suit is time barred by
the Limitation Act. He emphasized that the claim, if any, is stale and that's why there is no
evidence to substantiate it. He prayed that this court be pleased to uphold this objection and
dismiss this suit with costs to the Defendant.

Plaintiff's submission.

45 In reply, Counsel for the Plaintiff submitted that this suit is not time barred. That the Plaintiff's
claim was acknowledged in unmistakable language by the Defendant in 2009. He explained that
according to Exhibit PE5, the promise by the Defendant to buy an equivalent land and construct
a house thereon for the Plaintiff was to be implemented by the 15th of June 2011. It was not
implemented and at the end of that period, the cause of the action, being an action in breach of
50 contract, arose. That an action in breach of contract can be enforced within six years of the date
it arose. He referred court to section 3(1) of the Limitation Act and explained that in this case,
the Plaintiff was filed on the 11th November 2016 which is within the six-year period from June
2011. Counsel prayed that this objection be overruled because the suit is valid. He relied on
Section 22(4) of the Limitation Act which provides that –

55 *“Where any right of action has accrued to recover any debt or other liquidated pecuniary
claim.....and the person liable or accountable therefore acknowledges the claim or makes any
payment in respect of the claim, the right shall be deemed to have accrued on and not before the
date of the acknowledgment or last payment ...”*

60 Counsel explained that acknowledgement under this provision rekindles a claim otherwise barred
by limitation. That an acknowledgement under the Act or for the purposes of the Act must be in
writing.

Counsel further relied on **Section 23** of the Limitation Act which provides that: -

*“Every such acknowledgement as is mentioned in Section 22 shall be in writing and signed by the
person making the acknowledgement”.*

65 He referred court to the case of **Con-corp International Uganda Ltd -v- Muslim Supreme Council,
HCCS No.318 of 2002** and submitted that this suit is not time barred.

Analysis

S. 10. of the contracts Act, 2010 defines a contract as follows: -

70 *(1) A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.*

S. 3 of the Limitation Act, Cap 80, provides for limitation of actions of contract and tort and states that;

(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose—

75 *(a) actions founded on contract or on tort;*

In this case, the Defendant states in paragraph 11 of his witness statement that the Plaintiff was a donor of a power of Attorney.

Exhibit P.4 on page 6 and 7 of the Plaintiff's trial bundle is an agreement between the Plaintiff and the Defendant, made in the following terms;

80 AGREEMENT BETWEEN
JOSEPH KIGGUNDU
AND
JOHN MUYAMBI MULURI
P.O BOX 8898
85 KAMPALA

I, Kiggundu Joseph, have given powers to John Muyambi Muluri to use my certificate of title comprised in Busiro Block 401 -402 plot 162 at Namulanda.

I have given to him to use it as security to borrow money from Uganda Commercial Bank, Main Branch. We have agreed as follows: -

- 90 a) He will return the certificate of title to me on or before 27/12/91
b) He has to pay me a percentage of 10% of the money he has borrowed from the Bank in cash
c) He is the one responsible to pay back the money he has borrowed from the bank plus interest
95 d) Mr. Muruli is also authorized to sign the documents and to withdraw money from the Bank
e) If Mr. Muluri does not return the title upon expiry of the given date of 27/12/91, then he shall pay me an interest of 10% for none use of my property until he returns the title to me.

100 Both of us have consented to the above.

.....
Signed (Kiggundu)
Donor

.....
signed (Muluri)
Attorney

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I believe, on the balance of probabilities that this is the power of attorney that the Defendant refers to in paragraph 11 of his witness statement because it shows that the Plaintiff is the donor as stated by the Defendant.

110 The heading of the document shows that it is an agreement between the Plaintiff and the Defendant. I find that the agreement falls within the meaning of contract under S. 10 of the Contracts Act, 2010.

Under Paragraph 14 of his witness statement, the Plaintiff states that in about 1999, he was told that auctioneers had visited his property and asked the people he had left in occupation to vacate his property as it was on sale by the Bank and that the property had been advertised.
115 The Plaintiff says that he approached the Defendant and asked him to save the property but the Defendant declined saying he would buy another property for him. This evidence is in line with paragraph 17 of the Defendant's witness statement where he says that;
"sometime in 1999, the Plaintiff approached me and asked for help to redeem his property...
The Plaintiff told me that NPART was selling the property at Ushs. 2,500,000/-".

120 This makes me believe that the Plaintiff was truthful in his evidence.

Under paragraph 16 of his witness statement, the Plaintiff states that;
"on the 15th June, 2009 after a long period of promises, I told the Defendant that he should give me proof that he meant what he said...the Defendant committed to buying me a plot of equivalent value and to build for me a house and for other compensation. The copy of the
125 agreement is marked E(a) in Luganda and E(b) in English, at pages 8-9. I signed the agreement and the Defendant signed the Agreement".

Pages 8- 9 of the Plaintiff's trial bundle is Exhibit P.5. In this document, the Defendant admits that he agreed to buy a mailo land, quarter an acre with a certificate of title for the Plaintiff. That the land should not be more than 5 kilometres from where the plaintiff used to stay. The
130 Defendant admits that he used the Plaintiff's land as security for a loan from Uganda Commercial

Bank Main Branch and that he did not pay the loan and the Bank sold the Plaintiff's land. The defendant commits that he will also construct a house on the land for the plaintiff and that this would take 2 years from the date of this agreement. This agreement is dated 15th/6/2009. This means that two years would end on the 15th/6/2011.

135 I find the Plaintiff's evidence to be consistent even during the cross examination. Given the fact that his evidence has been found to be truthful in paragraph 14 of his witness as compared to paragraph 17 of the Defendant's witness statement, I would find no reason to doubt the Plaintiff's evidence in paragraph 16 of his witness statement. Therefore, I find that the Plaintiff entered into an agreement with the Defendant on the 15th /6/2009, with the Defendant committing himself to buy land and construct a house for the Plaintiff in a period of two years
140 from the date of the agreement.

Section 22(4) of the Limitation Act provides that: -

*“where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to personal estate of a deceased person or to any share or interest in it, and the
145 person liable or accountable therefor acknowledges the claim or makes any payment in respect of the claim, the right shall be deemed to have accrued on and not before the date of acknowledgement or the last payment....”*

In the case of ***Greenland Bank (in Liquidation) –v- Dr. Apuuli Kihumuro & Anor, HCCS No. 790 of 2003***, court noted that the effect of acknowledgement or part payment of a debt or other
150 liquidated sum is that time which had started to run against the creditor may be stopped and made to start a fresh by an acknowledgement of liability or by a part payment made by the debtor.

In the case of ***Dr. Maj. (Rtd.) Okullo Anthony Jallon –v- Attorney General, HCCS No. 383 Of 2012***, court noted that;

155 *“The effect of acknowledgement or part payment of a debt or other liquidated sum is that time which had started to run against the creditor started afresh by an acknowledgment of liability made by the debtor; see JK Patel (Supra). It is the law that time which has started to run against*

the creditor may be stopped and made to start afresh by acknowledgment of liability or by a part payment made by the debtor.”

160 In this case therefore, much as according to the 1st agreement the Defendant was supposed to return the Plaintiff's title on or before the 27th /12/91, time begun to run after 2011, because the Defendant entered into another agreement with the Plaintiff on the 15th /6/2009 where he committed himself that he would buy land and build a house on it for the Plaintiff in a period of 2 years. This would mean therefore, that the 2nd agreement would run out 6 years after the date
165 of signing the agreement and this takes us to the 15th/6//2017. This case was filed in court on the 11th /11/ 2016, which is within the limitation period. Therefore, I find no merit in the preliminary objection raised by Counsel for the Defendant and it is hereby over ruled.

Going back to the issues, I find that the finding of this preliminary objection also answers the 1st, 2nd and 3rd issues in the affirmative. On the 1st issue, I have established that the agreement was
170 between the Plaintiff and the Defendant. In the 1st agreement the Defendant did not sign on behalf of the company. There is no evidence on court record to show that the plaintiff entered into an agreement with MUMUJO Limited. Exhibit P.4 is very clear that the agreement was between the Plaintiff and the Defendant.

On the 2nd issue, I have already validated the two agreements. Exhibit P.4 and Exhibit P.5 and
175 explained that the 2nd agreement, Exhibit P.5 is the one that the Plaintiff rightly based on to file this suit before expiry of the limitation period and both agreements by implication of finding are valid.

I will now proceed to address the issue on remedies available to the parties.

Submissions

180 In regards to compensation, counsel for the Plaintiff submitted that it is the Plaintiff's evidence that a plot of land in the same place with a house like the one he had is in the range of Ugx. 150,000,000 (one hundred and fifty million Uganda shillings only) – 250,000,000/- (two hundred fifty million Uganda shillings only) and that the agreement, Exh. P5, on pages 8 & 9 of the Plaintiff's trial bundle, it provided for payment to the Plaintiff of 10% of the amount
185 borrowed from the date of the agreement until when the Defendant constructs a house for the Plaintiff.

Defendant's Submissions

190 In reply, Counsel for the Defendant submitted that the Plaintiff is not entitled to any remedies sought since his claim is not valid. That the claim of Ugx. 250,000,000/= is baseless and there is no proof of what the value of land and a house in the area is. Counsel explained that there is no valuation report to show what the value of land at Namulanda is. That the claim of Ugx. 150,000,000/= is as speculative as the claim in the suit and allegation therein are unfounded. Counsel prayed that this suit be dismissed with costs for being baseless and speculative.

195 Analysis

The Plaintiff prayed for compensation of Ugshs. 150,000,000/- for purchase of an equivalent plot of land at Namulanda where his land was located and a sum of 150,000,000/- being the accrued interest on the loan as agreed upon in the agreement and the cost of construction of his house. He also prayed for general damages for breach of contract and costs of the suit.

200 In the case of *Dharamshi –v- Karsan (1974) 1 EA 41*, court noted that;
“damages are awarded to fulfil the remedy of *restitutio in integrum*, which means that the plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred.”

205 In the case of *Union Bank of Nigeria PLC –v- Alhaji Adams Ayabule & another (2011) JELR 48225 (SC) (SC 221/2005 (16/2/2011))*, cited in *Kenya Women Microfinance Ltd –v-Martha Wangari Kamau, CA No. 14 of 2020*, Mahmud Mohammed, JSC, is quoted to have stated that: -

210 “I must emphasize that the law is firmly established that special damages must be pleaded with distinct particularity and strictly proved and as such a court is not entitled to make an award for special damages based on conjecture or on some fluid and speculative estimate of loss sustained by a plaintiff.... Therefore, as far as the requirements of the law are concerned on the award of special damages, a trial court cannot make its own individual arbitrary assessment of what it conceives the plaintiff may be entitled to. What the law requires in such a case is for the court to act strictly on the hard facts presented before the court and accepted by it as establishing the amount claimed justifying the award.”

215 In this case, on the 15th/6/2009, the Defendant pledged to buy for the Plaintiff a piece of land at Namulanda, close to where his portion of land was. The estimated value of the said piece was not disclosed. Under paragraph 19 of his witness statement, the Plaintiff says that he consulted land agents and was advised that a plot of land of the same size together with a house in the area may now range between Ushs. 150,000,000/- (one hundred and fifty million Uganda shillings only) to Ugshs. 250,000,000/- (two hundred fifty million Uganda shillings only). This
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was in 2019 when the Plaintiff made his witness statement. No any other evidence has been presented to confirm the Plaintiff's claim. I find that the evidence presented by the Plaintiff is not enough to guide this court on the exact figure to be awarded as special damages.

225 In both agreements, the Defendant pledged to pay the Plaintiff 10% of the borrowed amount per annum for the period of default until when returns the title (1st agreement), and/or until he builds a house for him (2nd agreement). In the 2nd Agreement, (exhibit P.5) it is stated that;

'I shall also pay him 10% for the period I have not paid him until I have constructed a house for him'

230 According to Exhibit P.4 default started after the 27th /12/91. My understanding is that upon default, the Defendant would start to pay the Plaintiff effect January, 1992. This means the Defendant would pay the Plaintiff 10% of 5,000,000/- multiplied by the number of years until the date of this judgement (Ugshs. 10/100 X 5,000,000 X 31) =15,500,000/- (fifteen million five hundred thousand shillings only).

General Damages

235 In the case of *Luzinda –v- Ssekamate & 3 Ors, HCCS No. 366 of 2017*, court held that;

“it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconvenience accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions.”

240 In this case, the Plaintiff lost his land and house. Much as he has failed to prove the exact value of the property that he lost, I find that it is only fair that he is compensated for the loss. Damages are intended to restore the aggrieved party as nearly as possible to a position he or she would have been had the injury complained of not occurred. In this case, the Plaintiff lost his land and house at Namulanda. The Defendant intended to replace the Plaintiff property but he failed. I have taken note of the fact that the Plaintiff admits in paragraph 13 of his witness statement that
245 the Defendant has ever given him up to about Ugshs. 3,000,000/-. I would order that the Defendant now pays the Plaintiff Ugshs. 150,000,000/- (one hundred fifty million Uganda shillings only) as general damages. I hope this will enable the Plaintiff to get a piece of land within the vicinity of Namulanda and construct a simple house.

250 **Costs.**

Section 27 (2) of the Civil Procedure Act provides that the award of costs is in the discretion of court and that costs follow the event unless for good reasons, court directs otherwise. In the case of *Kwizera Eddie –vs- AG, SCCA No. 1 of 2008, Ekirikubinza, JSC* noted that: -

255 *“the phrase costs follow the event means that ‘an award of costs will generally flow with the result of litigation; the successful party being entitled to an order for costs against the unsuccessful party. In other words, the general rule is that a successful party will be awarded costs.”*

In this case, I find no reason to deny the plaintiff costs.

Therefore, judgment is entered for the Plaintiff in the following terms: -

- 260
1. The Defendant be and is hereby ordered to pay the Plaintiff 10% per annum of the loan amount from the date of default on the 1st January, 1992 until the date of judgement in this case.
 2. The Defendant be and is hereby ordered to pay Ugshs. 150,000,000/- (one hundred fifty million Uganda shillings only) as General Damages.
 3. The Defendant pays costs of this suit.

265 I so order

Dated, signed and delivered by mail at Kampala, this 4th day of October, 2023.

270 Esta Nambayo
JUDGE
4th/10/2023